

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

FILED

MAY 06 2005

[Signature]
CLERK

BILLY TYLER,

Plaintiff,

vs.

JOSEPH HAAS, Clerk of United States
District Court , South Dakota ,

Defendant.

CIV 05-4050

MEMORANDUM OPINION
AND ORDER

Plaintiff, Billy Tyler (Tyler), filed a complaint under the Federal Tort Claims Act, alleging that Defendant neglected to send him a copy of the Order of Dismissal in *Tyler v. Karie*, Civ. 04-4151. The complaint further alleges that Defendant's actions kept Tyler from filing a timely notice of appeal from the Order of Dismissal, and Tyler requests \$100,000 in damages . Doc. 1. Tyler, who is currently incarcerated, also filed a motion to proceed in forma pauperis. Doc. 2.

In *Tyler v. Karie*, Civ. 04-4151, this Court ordered that the time for Tyler to file his notice of appeal be reopened pursuant to FED. R. APP. P. 4(a)(6). Tyler then filed a timely notice of appeal.

In a civil action in which a prisoner is suing a governmental entity or an officer or employee of a governmental entity, this Court must screen the complaint and dismiss the complaint "if the complaint --

- (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted, or
- (2) seeks monetary relief from a defendant who is immune from such relief."

28 U.S.C. § 1915A. *See also* 28 U.S.C. § 1915(e)(2). The Court need not determine whether the Clerk of Court is entitled to quasi-judicial absolute or qualified immunity, since Tyler's ability to ultimately file a timely notice of appeal renders his lawsuit frivolous. The complaint will be dismissed as frivolous.

Tyler has filed in excess of 90 lawsuits in Federal District Court in the District of Nebraska. More than three of Tyler's complaints, which were filed when he was a prisoner, have been dismissed as frivolous, malicious or for failing to state a claim upon which relief can be granted. The "three strikes" provision of 28 U.S. § 1915(g) thus prevents Tyler from proceeding in forma pauperis

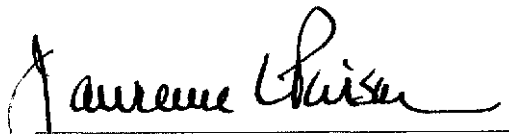
unless he "is under imminent danger of serious physical injury." There is no allegation of such imminent danger. Accordingly,

IT IS ORDERED:

1. That the motion to proceed in forma pauperis (Doc. 2) is denied; and
2. That the complaint (Doc. 1) is dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2) and 28 U.S.C. § 1915A.

Dated this 6th day of May, 2005.

BY THE COURT:



Lawrence L. Piersol
Chief Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: 

(SEAL) DEPUTY